IN THE HIGH COURT OF DELHI

Crl.M.C.No.35/2005

#	Mrs.Shobhana Bhartia & Ors.	.....	Petitioner
!	through:	Mr.D.C.Mathur, Sr. Advocate with Mr.Sandeep Mittal, Ms.Meghna Mishra, Advocates	

VERSUS

$	NCT of Delhi & Anr.	.....	Respondent
^	through:	Mr.Sunil Malhotra with Mr.S.K.Sareen, Mr.Sohail Khan, Mr.Pawan Mishra, Advocates	

Mr.Baldev Malik for the State

Crl.M.C.No.350/2005

#	Vineet Jain	.....	Petitioner
!	through:	Mr. Mr.R.K.Handoo with Mr.Manish Shukla, Advocates	

VERSUS

$	NCT of Delhi & Anr.	.....	Respondent
^	through:	Mr.Sunil Malhotra with Mr.S.K.Sareen, Mr.Sohail Khan, Mr.Pawan Mishra, Advocates	

Mr.Baldev Malik for State

Crl.M.C.No.2188/2005

#	Ram Kirpal Singh	.....	Petitioner
!	through:	Mr.R.K.Handoo with Mr.Manish Shukla, Advocates	

VERSUS

$	NCT of Delhi & Anr.	.....	Respondent
^	through:	Mr.Sunil Malhotra with Mr.S.K.Sareen, Mr.Sohail Khan, Mr.Pawan Mishra, Advocates	

Mr.Baldev Malik for State

Crl.M.C.No.3898-99/2005

Sanjay Gupta & Anr. ..... Petitioner
! through: Mr. Manoj Goel, Mr.Joginder Sharma, Mr.Wajeeh Shafiq, Mr.Gopal Verma, Ms.Rajni Yadav, Advocates

VERSUS

$ NCT of Delhi & Anr. ..... Respondent
^ through: Mr.Sunil Malhotra with Mr.S.K.Sareen, Mr.Sohail Khan, Mr.Pawan Mishra, Advocates

Mr.Baldev Malik for State

RESERVED ON: 20.08.2007

% DATE OF DECISION: 21.09.2007

CORAM:
* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. A person is identified by his name. His name may have no value to society but would be precious to the person concerned. A good name is better than great riches. Shakespeare's Othello, Act III, Scene 3,167:

> "Good name in man and woman, dear my lord,
> Is the immediate jewel of their souls;
> Who steals my purse, steals trash; 'tis something, nothing;

‘T was mine, ‘tis his, and has been slave to thousands;
But he that flinches from me my good name,
Robs me of that which not enriches him,
And makes me poor indeed.”

2. Laws of defamation aims at protecting the name and goodwill of a person in society.

3. Backdrop facts giving rise to the present petitions are that in the year 2000 the Central Bureau of Investigation (CBI) registered a case against some employees of DDA who were allegedly involved in a housing allotment scam. Smt. Usha Ravichandran, Senior Personal Secretary to Commissioner (Personnel) was also accused of being involved in the scam. Thereafter, all the employees booked as accused by CBI including Smt. Usha Ravinchandran were suspended. (Usha Ravichandran was suspended on 16.11.2000)

4. Subsequently, on 15.6.2001 suspension of Smt. Usha Ravichandran was revoked and she was reinstated. It is pertinent to note that Smt. Usha Ravichandran was the only suspended employee to be reinstated.

5. On 4.5.2001, a news item appeared in the New Delhi edition of the newspaper ‘Navbharat Times’. English translation of said news item reads as under: -

“RESENTMENT AMONGST THE EMPLOYEES OF DDA OVER REVOCATION OF SUSPENSION OF USHA RAMCHANDRAN

Senior Correspondent, New Delhi.

There is a grave resentment among the employees of DDA over the news of revocation of suspension of Usha Ramachandran, Private Secretary to Commissioner (Personal) DDA who is accused of bungling to the tune of several crores in allotment of DDA flats.

The CBI conducted raids in the month of November last year at the offices and residential premises of several officers of DDA including this woman employee. A huge amount of cash, document relating to DDA houses were recovered from the possession. CBI had registered a case against these officers after the recovery of this property.

According to leaders of the employees it is improper to revoke the suspension of only one accused out of seven accused persons by the officers of DDA without obtaining permission from CBI. They alleged that this has been done at the behest of high level political recommendation.

According to sources this file has been sent to Chief Vigilance Officer of DDA on Thursday evening after taking decision to revoke the suspension of Usha Ramchandran. Now orders in this regard have to be issued from there.

According to sources that, being aware of the mysterious aspects of this matter all the officers of DDA are reluctant to take decision on revocation of suspension of Usha Ramchandran and of becoming a party to this decision, but they are being forced to do this by pressure of above."

6. On 21.6.2001, a news item appeared in the daily edition of the newspaper 'Hindustan Times'. Said news item reads as under: -

"Scam-tainted DDA staffer gets her job back

Aruna P.Sharma
New Delhi, June 20

A DDA employee facing Central Bureau of Investigation (CBI) probe in connection with housing scandal, which broke out last year, has been reinstated.

The orders revoking suspension have been issued despite opposition from the CBI officials who were yet to complete their inquiry and finalise report.

The personal secretary of Commissioner, Personnel, Usha Ravichandran is the only employee under investigation who has been reinstated while others continue to be under suspension.

The CBI had raided the premises of Usha and a number of employees last November in connection with fraudulent allotment of flats and illegal refunds.

She along with Ashok Kapoor, personal Secretary to the then Vice Chairman, Director Housing V.K. Shinged and others were suspended following raids in their offices and residential premises.

A CBI official on condition of anonymity said there was pressure from the very beginning to reinstate Usha.

The last request for giving her clean chit came about two to three months ago but after that we have not been approached, the official said. He added that there was evidence against Usha who was apparently a conduit for receiving payments for making favourable transfers and postings.

One of the accused M.L.Ahuja, Assistant Director Social Welfare had confessed to the investigating officials that he made regular payments to Usha for transfers and postings.

Payment slips in the name of Usha were also found at Ahuja's premises. Ahuja's son Mohit is a

property dealer and was doing housing related work, the official added.

The reinstatement of Usha, who is allegedly close to the Commissioner, Personnel, has sparked off Personnel, has sparked off resentment in DDA. Some of the employee union members said that there is little hope of tackling corruption if senior officials bend backwards to reinstate their favourites.

They pointed out that the reinstatement had been made in spite of clear instructions from the Central Vigilance Commission that clearance is required from the agency on whose recommendation suspensions have been made; in this case the CBI.

They also said that she had reported back to Personnel Department on rejoining and had proceeded on leave immediately.

When contacted Vice Chairman of DDA, Prasanna Hota said that the reinstatement was made, as there was dire shortage of personal secretaries in DDA. It was made after consulting the CVC. Finance Member Laxman Rao had also gone into the merits of the case.

Asked why only one suspended employee was reinstated, Mr. Hota said that if others made representation, their cases would also be considered.

In the absence of evidence against Usha, she was reinstated, Vice Chairman said. She has, however, not been posted in Personnel or Housing departments, he pointed out." (Underlining emphasized)

7. On 24.6.2001, a news item appeared in the New Delhi edition of the newspaper 'Dainik Jagran'. English translation of said news item reads as under: -

"HOUSING ALLOTMENT SCANDAL

Many questions take birth with the reinstatement of Private Secretary

Naveen Gautam

New Delhi: 24th June. With the secret reinstatement of Private Secretary to the Commissioner (Personnel) of Delhi Development Authority, accused in Housing-Allotment Scandal, many questions are being raised. Whereas on the one hand, the Private Secretary's proceeding on leave just after taking charge after her reinstatement is a hot topic of discussion amongst the D.D.A. employees, on the other hand, other D.D.A. employees named as accused in the said Scandal have reason to rejoice. They hope that they would also be reinstated. On seeing the said charged officials, people have started guessing as what will be the result of the Enquiry of Housing Allotment Scandal.

It is worth consideration that in connection with Houses Allotment Scandal, C.B.I. last year on 10th November, while making raid at Vikas Sadan, the Head Office of D.D.A., had registered cases against about a dozen persons, who were immediately suspended by the Authority. The suspended officers included the then Director (Housing) V.K.Singh, Personal Secretary to the Vice-Chairman, Ashok Kapur, Joint Commissioner (Housing-Self Financing Scheme) M.S.Sharma and also Usha Ravichandran, P.S. to the Commissioner (Personnel). Last week Usha Ravichandran was secretly reinstated. But for the time being she has proceeded on leave after taking charge. Her reinstatement has become a topic of discussion amongst the D.D.A. Officials. It is said that even after her suspension, Smt. Ravinchandran used to visit D.D.A's Head Office. She continued to visit the Authority's Head Office every after two/three days and she often used to sit in the room of the Commissioner (Personnel). Her visits to Vikas Sadan even after suspension are also confirmed from her car number entered in the register of

Security Guards. It is also a hot topic of discussion amongst the officials that Arvind Kumar, Commissioner (Personnel) has played a key role in the reinstatement of Smt. Chandran. The sources of the Authority, while raising fingers at her reinstatement, state that last year in the months of June-July an examination for promotion from L.D.Cs to the posts of U.D.Cs was held. The right of checking the said examination-papers was of the Director (Nazarat) Mr. Jha. But Usha Ravichandran was given authority by the Director to check the copies related to the exam, which was out of her power. C.B.I. during the raids had also seized the said copies and when the marks made thereon were got examined by Hand-Writing Expert, it became clear from the said examination report that the said marks were given by Smt. Ravichandran. Sources say that during the checking of copies of the said exam, lot of irregularities were made in which sixty L.D.Cs were promoted as U.D.Cs. It is a topic of discussion that when an enquiry is under process then what is the justification of her reinstatement? It is more specific that her reinstatement has been made by Member (Finance) Laxman Rao, after clearance given by Joint Director (Vigilance) D.D.A, which is totally illegal. Whereas the right to give clearance is only vest with the Chief Vigilance Officer. Besides that, C.B.I., while raiding the Sheikh Sarai flat of Smt. Chandran, had made an adverse report regarding unauthorizedly constructed room on the roof-top and as well as the photographs thereof were taken. When the said matter is also still under enquiry, then what is the justification of reinstatement? Not only the C.B.I has also seized those documents, by which 32 Work Assistants (Electricity Division) were directly promoted as Junior Engineers. The sources disclose that the said matter is also under investigation.

Well, whatever may be the result, but by the reinstatement of Usha Ravichandran, other suspended employees are very much hopeful. They now feel that they will also be reinstated soon. For that some officers had been visiting Vikas Sadan from the very beginning. Amongst

whom is also Assistant Director M.S.Ahuja. His visits are confirmed from the register of the Security personnel of D.D.A., wherein the number of the vehicle is entered. However, from the said action of reinstatement, the employees of D.D.A have now started admitting that the enquiry of Housing Allotment Scandal will surely be effected."

8. Alleging that the afore-noted news items are defamatory and had directly or indirectly harmed and injured her reputation, Smt. Usha Ravichandran, chief protagonist of said news items filed three complaints under Sections 499 and 500 of the Indian Penal Code, 1860.

9. Pertaining to news item published in the 'Hindustan Times', complaint was filed against following three persons: -

(i) Shobhna Bhartiya ..... Managing Director

(ii) Vir Sanghvi ..... Chief Editor

(iii) Aruna P. Sharma ..... Correspondent

10. Pertaining to news item published in the 'Navbharat Times', complaint was filed against following two persons: -

(i) Vineet Jain ..... Managing Director, Benett Coleman & Co

(ii) Ram Kirpal Singh ..... Editor

11. Pertaining to news item published in the 'Dainik Jagran', complaint was filed against following three persons: -

(i) Narendra Mohan..... Chairman and Managing Director (Since died)

(ii) Sanjay Gupta ..... Chief Editor

(iii) Naveen Gautam ……. Reporter

12. Vide order dated 1.2.2002, accused in all the three complaints were summoned by the learned Metropolitan Magistrate to face trial for an offence under Section 500 of the Indian Penal Code.

13. By way of above captioned petitions, the petitioners invoke the inherent jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 to quash the summoning order dated 1.2.2002. Details of the said petitions are as follows: -

S. No.	Crl. M.C. No.	Names of Petitioners
1.	35/05	Shobhana Bhartiya, Vir Sanghvi, Aruna P. Sharma
2.	350/05	Vineet Jain
3.	2188/05	Ram Kirpal Singh
4.	3898-99/05	Sanjay Gupta, Naveen Gautam

14. Principal contention advanced by the petitioners is that the said news items are neither defamatory nor have been made with reckless disregard for the truth. Counsel for the petitioners contended that true facts have been reported in the news items in question. It was further contended that it is the duty of a newspaper to expose corruption and bring to the notice of the general public the manner in which a public body is conducting its affairs.

15. Per contra, learned counsel for the complainant contended that the said news items are per se defamatory.

Whether or not they contain true facts or were published in public interest is a matter of defence. That it is settled law that courts cannot consider defence of a party at the stage of quashing. Counsel relied upon following judgments in support of his argument: -

(i) *Shatrughna Prasad Sinha v Rajbhau Surajmal Rathi & Ors*, (1996) 6 SCC 263.

(ii) *Sewakram Sobhani v R.K. Karanjiya*, AIR 1981 SC 1514.

(iii) *Sardar Nihal Singh v Arjan Das*, 1983 CrLJ 777.

16. Every individual has a right to protect his reputation. Disparaging and defamatory statements made about a person to a third person or persons without lawful justification or excuse are actionable in law. As observed by the Supreme Court in the decision reported as *State of Bihar v Lal Krishna Advani*, AIR 2003 SC 3357 reputation is an integral and important aspect of dignity of every individual. The right to preservation of one's reputation is acknowledged as a right in rem, a right good against all the world.

17. But freedom of speech and expression are the foundation of all democratic organisations. Freedom of expression stems from the requirement that members of a democratic should be sufficiently informed. In the decision reported as *Attorney General v Times Newspaper Ltd.,* (1973) 3 All ER 54, it was

observed that freedom of expression has following four broad social purposes to serve:-

(i) It helps an individual to attain self fulfillment.

(ii) It assists in the discovery of truth.

(iii) It strengthens the capacity of an individual in participating in decision making.

(iv) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

18. The right of the print media to publish news pertaining to matters of public concern is recognized as an integral part of freedom of expression. (See decisions of the Supreme Court in *Virender v State of Punjab* AIR 1958 SC 986 and *Sakal Papers v Union of India* AIR 1962 SC 305.

19. The fundamental objective of journalism is to serve the people with news, views, comments and information on matter of public interest in a fair, accurate, unbiased, sober and decent manner. It is the legitimate function of a newspaper in a democratic set up to act as the champion of a clean administration and sentinel of public interest, and as such a newspaper is within its right to expose and bring to the notice of the general public any lapse or malpractice in the working of a public authority including acts of nepotism and favoritism.

20. The law of defamation is a culmination of a conflict between society and the individual. On one hand lies the fundamental right to freedom of speech and expression enshrined under Article 19(1)(a) of the Constitution of India, on the other is the right of individual to have his reputation intact. How far does the liberty of free speech and expression extend? And when does it become necessary for the law to step in to safeguard the right of the individual to preserve his honour. The law of defamation seeks to attain a balance between these two competing freedoms.

21. The classical definition of 'defamation' has been given by Justice Cave in the case of *Scott v Sampson,* (1882) Q.B.D. 491, as a “false statement about a man to his discredit”.

22. In the book *The Law of Defamation*, by Richard O'Sullivan, QC and Ronald Brown, 'defamation' is defined as a false statement of which the tendency is to disparage the good name or reputation of another person.

23. As per Section 499, Indian Penal Code, offence of defamation consists of three essential ingredients namely:-

(i) Making or publishing any imputation concerning any person.

(ii) Such imputation must have been made by words either written or spoken or by visible representation.

(iii) Such imputation must be made with the intention to cause harm or with the knowledge or having reasons to believe that it will harm the reputation of the person concerned.

24. In the light of above discussion, it has to been seen whether news items in question are defamatory or a fair report pertaining to the affairs of DDA, a statutory body charged with the planned development of Delhi.

25. Before proceeding to analyse the news items in question, I quote the well-known passage of Lord Shaw in the decision reported as *Arnold v King Emperor* LR (1913-14) 41 Ind. App. 149.

> "The freedom of the journalist is an ordinary part of the freedom of subject, and to whatever lengths the subject in general may go, so also may the journalist, but, apart from statute law, his privilege is no other and no higher. The responsibilities which attach to this power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful; but the range of his assertions, his criticisms, or his comments, is as wide as, and no wider than, that of any other subject. No privilege attaches to his position."

26. Pertaining to news item published in 'Navbharat Times', relevant allegations in the complaint are as follows:-

> "7. That the Accused No. 1 to 3 caused a news item in "NavBharat Times" New Delhi Edition dated 4th May 2001, making false allegations that the complainant was involved in illegal allotments of DDA Flats and misappropriated several crores of rupees. It is submitted that the complainant had not worked in the Housing Department of DDA and, therefore, the

allegations that she was connected with housing scam is totally false, malicious and defamatory. Copy of the said publication is annexed hereto and marked as ANNEXURE-D to this complaint.

8. That the accused No 1 to 3 made allegations in the news item, which is publicly circulated in the city and other parts of the country stating that the on the raid conducted by CBI officers on the complainant a huge amount of cash, documents relating to various investments and documents relating to DDA houses were recovered."

27. News item published in 'Navbharat Times' centers around the facts that complainant was an accused in a housing scam being investigated by CBI. That a search was conducted at her office and her residential premises. That she along with 7 others employees were suspended. That she was the only suspended employee who was reinstated and that CBI had not given her a clean chit at the time of her reinstatement.

28. All these facts are a matter of record. What is reported in the said news item is statement of true facts. It is a fair and objective report of correct facts. There are no insuinations and innuendo.

29. In the complaint, complainant has stated that news item has falsely alleged that she was involved in the illegal allotments of DDA flats and misappropriated several crores of rupees, that she was working in Housing Department of DDA

and that in the raid conducted by CBI officials huge amount of cash, documents etc were found in her house.

30. The said news item does not report that complainant was involved in the housing scam. It merely reports that complainant is accused of being involved in the scam, which is a true fact. The news item also does not report that cash, incriminating documents were found from complainant's house. The said news item reports that a raid was conducted by CBI at official as well as residential premises of various DDA employees including complainant and that huge amount of cash and documents were recovered in the raids. It is a fact that a raid was conducted at the complainant's house and certain articles were seized by the CBI. The news item does not single out complainant. Complainant is trying to twist the said news item.

31. Thus, news item published in ‘Navbharat Times’ does not contain any defamatory imputations. It merely contains statement of true facts and is published in public interest.

32. The Supreme Court in the decision reported as *State of Haryana v Bhajan Lal and Ors*, AIR 1992 SC 604 considered in detail the ambit and scope of Section 482 of the High Court to quash the investigation/FIR/complaints. The decision lays down

following 7 circumstances in which such a power could be exercised; -

> “1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> 3. Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> 4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> 5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> 6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the

> institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
>
> 7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

33. Petition pertaining to news item in 'Navbharat Times' clearly falls in the category 1 and 3 enumerated in Bhajan Lal's case (supra).

34. Insofar as news item published in 'Hindustan Times' is concerned, allegations in the complaint reads as follows:-

> "9. That the said publication made by Accused No.1 to 3 with regard to the news item that there was evidence against the complainant that she was apparently a *conduit* for receiving payments for making favorable transfer and posting is totally wrong, derogatory and without any basis. The Accused No. 1 to 3 by making such false and frivolous publication directly attributed the allegations against the complainant that she was involved in the corrupt practices, which is perse defamatory and such imputation against her caused damage to her reputation, integrity, honesty and sincerity towards her official duty. The said publication has been made maliciously with an intention to cause damage to the reputation of the complainant and with a view to lower down her reputation in the society, official circles and amongst the friends and relations.
>
> 10. That the Accused No. 1 to 3 further published the false news item that one of the *Accused Sh. M.L. Ahuja, Assistant Director, Staff Welfare, confessed to the investigating officials*

> *that he made regular payments to the complainant for transfer and posting*, which is totally false and malicious.....
>
> 11. That Accused No. 1 to 3 had made further publication, that the complainant was reinstated as she was allegedly close to Commissioner (Personnel) is unfounded and perse defamatory. The suspension of the complainant was revoked on the basis of facts and circumstances of the case on merits by the Competent Authority as per rules of services. Such publication damages the reputation of the character of the complainant being a lady employee."

35. The focal point of the news item published in 'Hindustan Times' is also the fact that the complainant was the only suspended employee who was reinstated. However, the said news item does contains certain imputations which on a prima facie reading appear to be defamatory. (Imputations which appears to be defamatory have been underlined in para 6 above.) As is evident from allegations in the complaint noted in para 34 above, complainant has placed stress on the specific part of the news item which are per se defamatory.

36. Pertaining to news item published in 'Hindustan Times' petitioners sought to justify said imputations by relying upon a report stated to be filed by CBI. Said report is dated 30.11.2000 and is annexed as Annexure-E of the petition.

37. However, complainant questions the veracity of the report relied upon by the petitioners. In her reply to the present

petition complainant has submitted that said report is a fabricated document.

38. In the decision reported as *Sewakram Sobhani v R.K. Karanjia, Chief Editor, Weekly Blitz & Ors* AIR 1981 SC 1514, Supreme Court considered a complaint filed by the appellant against respondents for an offence under Section 500, IPC for publication of an news item which allegedly contained imputations which were per se defamatory. Holding that news item in question was based upon an enquiry report, the High Court had quashed the complaint. The High Court had observed that respondent's case "clearly falls within the ambit exception 9 of Section 499 of IPC" and that "it would be abuse of the process of the court if the trial is allowed to proceed which ultimately would turn out to be a vexatious proceeding." The reasoning advanced by the High Court was as follows:-

> "The real question to ask is, did the applicants publish the report for public good, in public interest and in good faith? My answer is in the affirmative. *It was a publication of a report for the welfare of the society. A public institution like prison had to be maintained in rigid discipline; the rules did not permit mixing of male prisoners with female prisoners and yet the report said the prison authorities connived at such a thing*, a matter which was bound to arouse resentment and condemnation. *The balance of public benefit lay in its publicity rather than in hushing up the whole episode.* Further, there was good faith in the

publication. The source on which the publishers acted was the proper source on which they were entitled to act and they did so with care and circumspection. *The report further shows that the publication had been honestly made in the belief of its truth and also upon reasonable ground for such a belief, after the exercise of such means to verify its truth as would be taken by a man of ordinary prudence under like circumstances.*"

39. Reversing the decision of the High Court, the Supreme Court observed as follows:-

"8. We have considerable doubt about the propriety of the High Court making use of the Enquiry Report which has no evidentiary value and in respect of which the Government claimed privilege. The application made by the Government claiming privilege still awaited consideration. While the Government claimed privilege at one stage, it appears to have waived the claim and produced the Enquiry Report and made the contents public. There was no factual basis for the observations made by the High Court underlined by me, except the Enquiry Report. The contents of the Enquiry Report cannot be made use of unless the facts are proved by evidence aliunde. There is also nothing on record to show that the accused persons made any enquiry of their own into the truth or other wise of the allegations or exercised due care and caution for bringing the case under the Ninth Exception. The Enquiry Report cannot by itself fill in the lacunae.

9. A bare perusal of the offending article in Blitz shows that it is per se defamatory. There can be no doubt that the imputation made would lower the appellant in the estimation of others. It suggested that he was a man devoid of character and gave vent to his unbridled passion. It is equally defamatory of Smt. Shukla in that she was alleged to be a lady of easy virtue. We need not dilate on the matter any further. It is for the accused to plead Ninth Exception in defence and

> discharge the burden to prove good faith which implies the exercise of due care and caution and to show that the attack on the character of the appellant was for the public good."

40. Petitioners have not filed any document to show that the alleged status report in question emanated from CBI. It's authenticity has to be proved by leading evidence.

41. In view of decision of the Supreme Court in *Sewakram Sobhani*'s case (supra), no ground is made out for quashing the complaint pertaining to the news item published in 'Hindustan Times' on the basis that the news item is a true and faithful report of a fact.

42. Pertaining to news item published in 'Dainik Jagran', relevant allegations reads as follows:-

> "7. That on the report of Accused No.3, a news item was published in the 'Dainik Jagran', New Delhi Edition, dated 25.06.2001, that the complainant was involved in a housing scam (while the complainant has never worked in housing department) and that the revocation of her suspension encouraged the other DDA employees to indulge in corruption. It is further alleged in the publication that Mr. Arvind Kumar,Commissioner (Personnel) played the main role in reinstatement of complainant. It is further alleged in the said publication that the complainant was given the answer sheet by the Director (nazarat) and gave marks, which was proved by handwriting experts. It is further alleged in the said publication that the complainant was reinstated by Joint Director(Vigilance). It is further alleged that documents were seized by CBI regarding the promotion of 32 Works Assistants (Electrical Department) directly to the post of Junior Engineer.

43. According to the complainant, said news item contains following 4 defamatory imputations:-

(i) That complainant was involved in the housing scam.

(ii) That Commissioner (Personnel) played a key role in the reinstatement of complainant.

(iii) That complainant checked certain examination papers which was outside the scope of her powers.

(iv) That complainant was wrongly reinstated.

44. The said news item does not report that the complainant is involved in the housing scam. It merely reports that the complainant is accused of being involved in the housing scam which is a true fact. Further, the mere statement that the Commissioner (Personnel) played a key role in the reinstatement of the complainant is not a defamatory statement.

45. It is relevant to note that defamation can be caused by following two ways:-

(i) By direct imputation.

(ii) By way of innuendo.

46. Innuendo are those expressions which are not actionable on their face, but which become so by the reason of the peculiar situation or occasion upon which the words are written

or spoken. In simple words, innuendo means an indirect accusation.

47. News item published in 'Dainik Jagran' reports that the complainant checked certain examination papers; that checking of said papers by the complainant was outside her powers; that investigations revealed that there were lot of irregularities in the checking of said papers; that the matter is under investigation.

48. This part of the said news item is an innuendo as it is suggestive of the fact that complainant is a corrupt and dishonest lady.

49. Pertaining to news item published in ' The Dainik Jagran' petitioners have not disclosed the source/basis of alleged defamatory imputations. In their petition, it is merely stated that said news item is based upon true facts.

50. Matter pertaining to news item published in 'Dainik Jagran' thus require a trial in as much as persons responsible for publication of said news items will have to establish that news item in question was based upon true facts.

51. The next question which needs to be answered is whether any criminal liability can be fastened on the petitioners or in other words whether the petitioners are the persons responsible for publication of said news items.

52. In Crl. M.C No.35/05, petitioner no.1, Ms. Shobhna Bhartiya is the Managing Director, HT Media Ltd, petitioner no.2, Mr. Vir Sanghvi is the Chief Editor, HT Media Ltd and petitioner no.3, Ms. P. Aruna Sharma is the reporter who wrote the news item published in 'Hindustan Times'. In Crl. M.C. No.350/05, petitioner, Mr. Vineet Jain is the Managing Director, Benett Coleman & Co. In Crl. M.C. No.2188/05, petitioner, Mr. Ram Kirpal Singh is the editor of Navbharat Times. In Crl. M.C. No.3898-99/05, petitioner no.1, Mr Sanjay Gupta is the Chief Editor of Dainik Jagran and petitioner no.2, Mr. Naveen Gautam is the reporter who wrote the news item published in 'Dainik Jagran'. This is precisely how petitioners have been described by the complainant in the complaints.

53. Primarily, a reporter is responsible for his act of defamation. Then, vicarious liability is fastened on the printer, publisher and editor of the newspaper under the Press and Registration of Books Act, 1967.

54. Section 1(1) of the Press and Registration Act, 1867 defines ‘Editor’ as a person who controls the selection of the matter that is published in a newspaper. Section 3 stipulates that every book or paper shall legibly print on it the place of printing; the name of the printer and the name of the publisher. Section 5 stipulates that every printer and publisher of a

newspaper shall make a statutory declaration before a competent Magistrate in the prescribed form. Section 6 stipulates regarding authentication of a declaration made under Section 5. Lastly, Section 7 stipulates as under:-

> "7. Office copy of declaration to be prima facie evidence -- In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declaration, or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, or printed on such newspaper as the case may be, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every newspaper whereof the title shall correspond with the title of the newspaper mentioned in the declaration or the editor of every portion of that issue of the newspaper of which a copy is produced."

55. In view of provisions of Press and Registration Act, 1867, particularly Section 7 unless the contrary is proved, the persons declared as printer, publisher and editor of the newspaper are presumed to be responsible for the contents of the newspaper.

56. Whether any person other than the Printer, Publisher and Editor can be prosecuted for a defamatory article?

57. In context of afore-noted question, it is relevant to note the following judicial pronouncements.

(i) *State of Maharashtra v R.B. Chowdhari*, AIR 1968 SC 110:- The public prosecutor filed a complaint under Section 500 IPC against four persons who were members of the Editorial Board of a Marathi weekly named “Maharashtra”. One of the accused, Sudhakar Gopal Madane, had filed the declaration in the prescribed form under the Act describing himself as the editor, printer and publisher of the newspaper. The particular copy of the Maharashtra in which the alleged defamatory article appeared bore the name of one Madane as the printer, publisher and editor of the newspaper. It also showed on the front page that the Editorial Board consisted of Madane and three other accused. The question arose whether the members of Editorial Board could be prosecuted for defamatory article. Adverting to Section 7, the Supreme Court held that:-

> “7. The term 'editor' is defined in the Act to mean a person who controls the selection of the matter that is published in a newspaper. Where there is mentioned an editor is a person who is responsible for selection of the material. Section 7 raises the presumption in respect of such a person. The name of that person has to be printed on the copy of the newspaper and in the present case the name of Madane admittedly was printed as the Editor of the Maharashtra in the copy of the Maharashtra which contained the defamatory article. The declaration in Form I which has been produced before us shows the name of Madane not only as the printer and publisher but also as the editor. In our opinion the presumption will attach to Madane as having selected the material for publication in the newspaper. It may not be out of place to note

> that Madane admitted that he had written this article. In the circumstances not only the presumption cannot be drawn against the others who had not declared themselves as editors of the newspaper but it is also fair to leave them out because they had no concern with the publishing of the article in question. On the whole therefore the order of discharge made by the learned single Judge appears to be proper in the circumstances of the case and we see no reason to interfere."

(ii) *T.K.S.Muthukoya v Haji C.H. Mohammad Koya,* (1979) 2 SCC 8: - Question before Supreme Court was whether the Chief Editor of a newspaper can be prosecuted for publication of a defamatory article. In para 34 of the decision, Supreme Court observed as under:-

> "34. From the facts established above, it is manifest that the petitioner has miserably failed to prove either that the appellant was the editor of the paper or that he was performing the functions, duties or shouldering the responsibilities of the editor. It is obvious that a presumption under Section 7 of the Press Act could be drawn only if the person concerned was an editor within the meaning of Section 1 of the Press Act. Where however a person does not fulfil the conditions of Section 1 of the Press Act and does not perform the functions of an editor whatever may be his description or designation, the provisions of the Press Act would have no application....."

(iii) *K.M. Mathew v State of Kerela & Anr*., 1992 CriLJ 3779:- In relation to prosecution of Chief Editor of a newspaper for publication of a defamatory news article, Supreme Court observed as under:-

“9. In the instant case there is no averment against the Chief Editor except the motive attributed to him. Even the motive alleged is general and vague. The complainant seems to rely upon the presumption under Section 7 of the Press and Registration of Books Act, 1867 ('the Act'). But Section 7 of the Act has no applicability for a person who is simply named as 'Chief Editor'. The presumption under Section 7 is only against the person whose name is printed as 'editor' as required under Section 5(1). There is a mandatory (though rebuttable) presumption that the person whose name is printed as 'Editor' is the editor of every portion of that issue of the newspaper of which a copy is produced. Section 1(1) of the Act defines 'Editor' to mean 'the person who controls the selection of the matter that is published in a newspaper'. Section 7 raises the presumption in respect of a person who is named as the editor and printed as such on every copy of the newspaper. The Act does not recognise any other legal entity for raising the presumption. Even if the name of the Chief Editor is printed in the newspaper, there is no presumption against him under Section 7 of the Act. See State of Maharashtra v R.B. Chowdhari, AIR 1968 SC 110; D.P. Mishra v Kamal Narain Sharma & Ors, AIR 1970 SC 856; Narasingh Charan Mohanty v Surendra Mohanty, AIR 1974 SC 47; Haji C.H. Mohammad Koya v T.K.S.M.A. Muthukoya, AIR 1979 SC 154.

10. It is important to state that for a Magistrate to take cognizance of the offence as against the Chief Editor, there must be positive averments in the complaint of knowledge of the objectionable character of the matter. The complaint in the instant case does not contain any such allegation. In the absence of such allegation, the Magistrate was justified in directing that the complaint so far as it relates to the Chief Editor could not be proceeded with. To ask the Chief Editor to undergo the trial of the case merely on the ground of the issue of process would be oppressive. No person should be tried without a prima facie case. The view taken by the High

> Court is untenable. The appeal is accordingly allowed. The order of the High Court is set aside."

(iv) *Sardar Nihal Singh v Arjan Das*, 1983 CrLJ 777:- A learned Single Judge of this court was considering whether the Chairman and Executive Editor of a newspaper could be prosecuted for publication of a defamatory article. With reference to Chairman, it was observed as under:-

> "Needless to say that as Chairman of the Company Shri Goenka can be held liable for the publication of the offending news items only if it is shown that he was somehow concerned with the publication of the defamatory news items. It is highly doubtful that he can be asked to answer the charge of defamation merely because he happened to be the Chairman of the Company owning the newspaper without there being any further evidence as regards his participation in the actual management and administration of the affairs of the company. Intention on the part of the accused to harm the reputation or the knowledge or reasonable belief that an imputation will harm the reputation of the persons concerned is an essential ingredient of offence under S. 400, IPC but such evidence is totally missing in the instant case. Under the circumstances the impugned order as regards Shri Goenka cannot be sustained on this short ground."

After referring to Section 3, 4, 5, 6 and 7 of the Press and Registration of Books Act, 1867, the learned Judge added:-

> "However, it is difficult to draw such a presumption in the case of other petitioners viz., Arun Shorie, petitioner No. 2 and A. P. Dhar petitioner No. 4. Their names do not find place in the declaration printed on the newspaper itself and there is no iota of evidence to show that they

> are in any manner concerned with the collection, control or selection of the matter printed in the newspaper. Their designations as Executive Editor/Editor of the Express News Service will not per se warrant an inference that they are in any way responsible for the selection of the material. An authority for this view may be found in the State of Maharashtra v. R. B. Chowdhari, AIR 1968 SC 110."

(v) *Sardar Bhagat Singh Akali v Lachman Singh*, AIR 1968 SC 269:- Calcutta High Court was considering the extent of the liability of the owner for defamatory statements published in the paper owned by him. In para 5 of the decision, it was observed as under:-

> "The owner in order to be liable under S. 499 of the Code has to have direct responsibility for the publication of the defamatory statement and he must also have the intention to harm or knowledge or reason to believe that the imputation will harm the reputation of the person concerned. The owner of a journal has thus no responsibility under the section. The editor of the paper, even though he might not be directly responsible for a defamatory statement published in his paper attract the responsibility by virtue of S. 7 of the Press and Registration of Books Act by virtue of his registration as editor under the Act which registration is sufficient evidence that he was also the printer or publisher of the paper concerned. The printer and publisher by virtue of their duties as such cannot of course avoid, the legal liability for defamation. The owner's liability will be attracted provided it can be shown that he was responsible for the publication with the necessary interest, knowledge or reasonable belief in the matter."

58. From the afore-noted judicial pronouncements, legal position which emerges is as follows:-

(i) Besides persons declared as editor, printer and publisher of a newspaper, only such person could be prosecuted for an action of defamation against whom specific and clear allegations has been made in the complaint that either he was responsible for selection of the defamatory matter or had personal knowledge about the contents of the defamatory matter. In addition, it must also be averred in the complaint that such person had the intention to harm or knowledge or reason to believe that the imputation will harm the reputation of the complainant.

(ii) The Chairman or the Managing Director of the company owning a newspaper is neither the editor, nor the printer nor the publisher and therefore no presumption could be drawn against holder of these offices even though they are, by reason of the offices held by them, incharge of, and responsible to, the company for the conduct of its business.

59. Vis-à-vis petitioner nos.1 and 2 in Crl.M.C.No.35/2005, petitioner in Crl.M.C.No.350/2005 and petitioner No.1 in Crl.M.C.No.3898-99/2005, the complaints filed against them does not contain any such averments. General and vague has been made against these petitioners.

60. It is relevant to note following observations of the Supreme Court in the decision reported as

S.M.S.Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr. 2005 (7) SCALE 397 :-

> ".....The normal rule in the cases involving criminal liability is against vicarious liability, that is, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. Section 141 of the Act is an instance of specific provision which in case an offence under Section 138 is committed by a Company, extends criminal liability for dishonour of cheque to officers of the Company. Section 141 contains conditions which have to be satisfied before the liability can be extended to officers of a company. Since the provision creates criminal liability, the conditions have to be strictly complied with. The conditions are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principal accused is the Company, had a role to play in relation to the incriminating act and further that such a person should know what is attributed to him to make him liable. In other words, persons who had nothing to do with the matter need not be roped in....."

61. Even otherwise, under the Indian Penal Code, no person can be prosecuted and punished for an offence committed by other person except in following 4 situations:-

(i) When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.(Section 34, IPC)

(ii) When a person abets commission of an offence, he who abets is liable for the offence committed in pursuance of abetment. (Section 107, IPC)

(iii) When an offence is committed in pursuance of a criminal conspiracy, all conspirators are liable for the offence committed (Section 120-B, IPC)

(iv) When an offence is committed by a member of an unlawful assembly in furtherance of common object of assembly, all persons who were members of such assembly at the time of the commission of the offence are liable for the offence committed. (Section 149,IPC)

62. In the instant case, there is no averment that said news item was written and published at the instance of and in furtherance of common intention of all the petitioners. The averments in the complaints also do not make a case of abetment or conspiracy.

63. In the absence of necessary averments in the complaint against these petitioners, learned Magistrate was not justified in issuing summoning order against them.

64. Petitioner no. 3 in Crl.M.C.No.35/2005 and petitioner No.2 in Crl.M.C.No.3898-99/2005 are the reporters of the alleged defamatory news items and therefore will have to face the trial.

65. The net result of the above discussion is summarized herein below :-

S.No.	Name of the petitioner	Petition No.	Result	Reasons
1.	Shobhna Bhartiya	35/2005	Allowed. Summoning order quashed.	Complaint filed against her does not contain necessary averments.
2.	Vir Sanghvi	35/2005	Allowed. Summoning order quashed.	Complaint filed against him does not contain necessary averments.
3.	Aruna P. Sharma	35/2005	Dismissed.	Being reporter of the alleged defamatory news item, she is liable.
4.	Vineet Jain	350/2005	Allowed. Summoning order quashed	i. News item in question does not contain any defamatory statements. ii. Complaint filed against him does not contain necessary averements.
5.	Ram Kirpal Singh	2188/2005	Allowed. Summoning order quashed.	News item in question does not contain any defamatory statement.
6.	Sanjay Gupta	3898-99/2005	Allowed. Summoning order quashed.	Complaint filed against him does not contain necessary averements.

7.	Naveen Gautam	3898-99/2005	Dismissed.	Being reporter of the alleged defamatory news item, he is liable.

66. No costs.

SEPTEMBER 21, 2007 PRADEEP NANDRAJOG, J